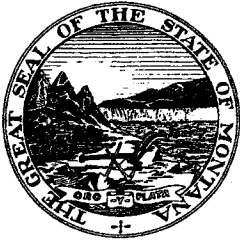


Exhibit No. 4Date 2/11/11Bill No. HB 191**DEPARTMENT OF  
PUBLIC HEALTH AND HUMAN SERVICES****Brian Schweitzer  
GOVERNOR****Anna Whiting Sorrell  
DIRECTOR****STATE OF MONTANA**[www.dphhs.mt.gov](http://www.dphhs.mt.gov)PO BOX 4210  
HELENA, MT 59604-4210  
(406) 444-5622  
FAX (406) 444-1970

Date: February 11, 2011

To: Members of the Public Health, Welfare and Safety Committee

From: Jane Smilie, Division Administrator, Public Health & Safety

Re: HB 191 Revise regulation of retail food establishment exemptions

The Department of Public Health and Human Services fully supports the ability of non-profit and volunteer groups to sell a variety of prepared products to raise funds for worthy causes. The clarification in the bill allowing sales for charitable community purposes is welcome. However, we have to oppose HB191 due to public health concerns.

The requirement for a group to register with the local health authority prior to each charitable event provides an opportunity to share pertinent food safety information. In some instances, it prevents potentially unsafe foods from being distributed. There is no cost and no license required for groups or persons conducting these activities.

The current law allows nonprofit groups to engage in fund raising activities selling food products that present a low-risk to the public health. Local Registered Sanitarians are providing a community service at no cost, reviewing the types of foods offered to ensure the protection of the public. The list of baked items that are a concern is short, generally those that require refrigeration (crème-filled pastries, selected pies and desserts) as well as home-canned products that could spoil, producing harmful bacteria that could cause human illness.

Elimination of this service and the minimal oversight provided poses a risk to the public health. Aside from concerns in one jurisdiction that brought about this bill, DPHHS is not aware of any similar concerns. Please help us protect your constituents by ensuring the requirement to consult with the local sanitarian is not removed from present law.

DEPARTMENT OF  
PUBLIC HEALTH AND HUMAN SERVICES



Brian Schweitzer  
GOVERNOR

Anna Whiting Sorrell  
DIRECTOR

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Date: February 11, 2011

To: Members of the Senate Public Health, Welfare and Safety Committee

From: Department of Public Health and Human Services on behalf of the Food Safety Advisory Council

Re: HB 191 Revise regulation of retail food establishment exemptions

In order to comply with statutory requirements, the Department has formed a Food Safety Advisory Council as outlined in MCA 50-50-103. The statute states: *The department shall establish a food safety task force or advisory council to assist in the development of administrative rules and/or review any proposed legislation related to the provision of food or food establishments.*

In addition, the statute states: *When the department learns of proposed legislation related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council.*

**Results of Polling the Council:** As of this hearing, DPHHS has received responses from five of the six Council members with 4 opposing and 1 in favor of the bill as written.

**DPHHS Comment:** In general, members representing local regulatory agencies were opposed to the revised language citing health and safety concerns. The opportunity to provide education regarding what type of products are low-risk and how to ensure safe preparation is viewed as essential to protect the public. The single comment received from a food industry representative indicated support without additional comment.

Comments received from Council members are attached for your review.



## Flathead City-County Health Department

1035 First Ave. West Kalispell, MT 59901

(406) 751-8101 FAX 751-8102

[www.flatheadhealth.org](http://www.flatheadhealth.org)

Community Health Services

751-8110 FAX 751-8111

Environmental Health Services

751-8130 FAX 751-8131

Family Planning Services

751-8150 FAX 751-8151

Home Health Services

751-6800 FAX 751-6807

WIC Services

751-8170 FAX 751-8171

Animal Shelter

752-1310 FAX 752-1546

January 11, 2011

### FOOD SAFETY ADVISORY COUNCIL

Kelly David

Registered Environmental Health Sanitarian

#### Comments Regarding House Bill 191:

The changes proposed in HB 191 would essentially allow any person, not necessarily associated with a non-profit or farmer's market, to sell baked goods or preserves to the public. Additionally these baked goods or preserves could potentially be prepared in kitchens that are not inspected or held to any minimum standard. It is not in the best interest of the consumer to allow foods to be sold out of an unlicensed, uninspected kitchen without some sort of institutional control. HB 191 does not support public health as it cuts out health departments as a source of guidance and information and potentially proposes to allow any person to sell baked goods or preserves in an unregulated manner.

The proposed additions to 50-50-103 2(a) reference a "charitable community purpose" that is currently undefined by Montana Code Annotated. A "charitable community purpose" must be defined before adoption of this bill should be considered or a legally defensible definition be added to this legislation. Any such term undefined leaves too much open to interpretation resulting in confusion and inconsistencies in application.

The removal of 50-50-202 2(b) inhibits the ability of a local health department to do its job. Those entities not associated with licensure and routine inspection by the health department must register ahead of time so that they can be assisted in setting up to prepare and serve food safely to the public. It is important that these groups, who may have less experience in public food service, work with health department sanitarians to make a plan and have access to information they need to succeed. Removal of the requirement that non-profits register with the local health department does not promote food safety. Education is a key element in prevention of foodborne illness. Additionally, pre-registering allows the local health authorities to have knowledge of food services at events in their jurisdictions.

A legally established farmer's market uses their health department as a resource and the sale of baked goods and preserves is known by the local health authorities even if the product itself is not prepared in a licensed facility. Non-profit food services currently are set up to succeed by contacting the department in advance and operating by a set of standards required of all food providers. HB 191 proposes changes that would allow for the sale of food to the public that does not meet basic standards of food safety. This does not promote public health, nor protect consumers.

**Tuemmier, Melissa**

**From:** Laurel Riek [lriek@co.lewis-clark.mt.us]  
**Sent:** Tuesday, January 11, 2011 3:05 PM  
**To:** 'jrolich@psb.mt.gov'; 'kdavid@flathead.mt.gov'; 'mjheister@hotmail.com';  
'dekaul@montanamail.us'; Tuemmier, Melissa; 'thomas.campbell@umontana.edu'  
**Cc:** Mike Henderson; Murphy, Jim  
**Subject:** HOUSE BILL NO. 191

HOUSE BILL NO. 191  
INTRODUCED BY K. FLYNN

Comments:

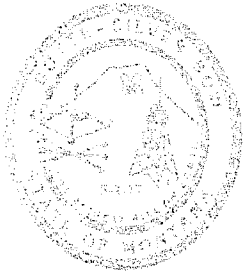
Registration with the health department allows food safety experts to provide education on items to be prepared. This is imperative for the health of our communities. There are many non-profit events that are high risk for causing food borne illness due to the food and/or volume prepared. When discussed with the health department, we can suggest safe methods of preparation that will manage the risk of food borne illness.

There are many community fund raising events that we have given approval for that have not had the "official" non-profit standing.

Recommendation: Do not eliminate line 25/26 on page 2.  
"50-50-202" (2)

25 (b) prior to each operation, shall register with the local health officer or sanitarian on forms provided by  
26 the department.

Laurel Riek, RS  
Food Safety Advisory Council Member  
Lewis & Clark City-County Health Department  
1930 9th Avenue  
Helena, MT 59601



## BUTTE-SILVER BOW HEALTH DEPARTMENT

Theresa R. Hocking, R.N./C.I.C./M.S.N.

Director of Public Health/Health Officer

25 West Front Street

Butte, Montana 59701

Office Number: (406)497-5020

Fax Number: (406)723-7245

**To:** Montana State Legislature

**From:** John Rolich, R.S., Food Safety Advisory Council Member

**Date:** January 11, 2011

**Subject:** House Bill No. 191 "Revise Regulation of Retail Food Establishment Exemptions"

Thank you for allowing me to comment on House Bill No. 191 "Revise Regulation of Retail Food Establishment Exemptions". There are two amendments to statute:

1. 50-50-103-2a: The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons selling baked good or preserves at farmer's markets or for charitable community purpose.

**Comments:** I endorse this change to the statute.

2. 50-50-202-2b: Prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department. This sub section has been stricken out.

**Comment:** I endorse the subsection. This subsection of the statute allows the local health department to:

- Educate the persons or organization on food safety;
- Discuss with the persons or organization on what type of foods can be made and sold at the event; and
- Help prevent a possible food borne illness outbreak.

In addition, there is no cost to persons or organizations for submitting the information to the local health department.

With the deletion of section 50-202-2b MCA, I am opposed to House Bill No. 191 "Revise Regulation of Retail Food Establishment Exemptions".

If you have any questions, I can be reached at 406-497-5027 or [jrolich@bsb.mt.gov](mailto:jrolich@bsb.mt.gov)

Comment from Mary Jane Heisler, Secretary/Treasurer of the Montana Tavern Association

Supports the bill as written. No other comment received.

Comment from Dan Kuhl, Food Safety Advisory Council member

Opposes the bill as written. After discussion with the Council he feels that the current system is working.